United States Department of Labor
Employees' Compensation Appeals Board

LYNDA M. HENSEL, Appellant	)	
and	)	**Docket No. 04-1266**
	)	**Issued: September 30, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Hazelwood, MO, Employer	)	

Appearances:
Lynda M. Hensel, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 14, 2004 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated April 17, 2003, for a 14 percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision in this case.

ISSUE

The issue is whether appellant has more than a 14 percent permanent impairment of the left upper extremity for which she received a schedule award. On appeal she contends that her condition has worsened and that she is also entitled to a schedule award for impairment to her right upper extremity.

FACTUAL HISTORY

On February 15, 1998 appellant, then a 40-year-old parcel post distribution machine operator, filed a Form CA-2 occupational disease claim alleging that factors of her federal employment caused bilateral carpal tunnel syndrome. She did not stop work. By letter dated

May 28, 1998, the Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome and she thereafter began light-duty work. On July 7, 1999 and July 6, 2000 appellant underwent left carpal tunnel release procedures and returned to light-duty employment.

On November 14, 2001 appellant filed a claim for a schedule award and submitted a report from Dr. Henry Paul, a Board-certified plastic surgeon, who made general reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[1] *H*e advised that appellant had a five percent impairment of the left upper extremity and a three percent impairment of the right upper extremity.

On February 20, 2002 appellant filed a Form CA-2a, recurrence of disability claim and thereafter began working four hours a day.[2] By letter dated March 5, 2002, the Office informed her that she had not reached maximum medical improvement and was, therefore, not entitled to a schedule award at that time. On June 7, 2002 the Office accepted the February 20, 2002 recurrence of disability claim and paid appropriate compensation. On July 10, 2002 appellant returned to full-time limited duty. She also submitted a July 23, 2002 report in which Dr. Brent V. Stromberg, Board-certified in surgery and plastic surgery, also referenced the A.M.A., *Guides*. He agreed that appellant had a five percent impairment on the left and a three percent impairment on the right.

In a letter dated January 17, 2002, appellant again requested a schedule award and claimed that the arthritis in her hands was a consequence of her employment-related carpal tunnel syndrome. On March 18, 2003 the Office referred appellant, together with a statement of accepted facts and the medical record to Dr. Daniel G. Sohn, a Board-certified physiatrist, for an opinion regarding her permanent impairment. On March 24, 2003 appellant filed a second schedule award claim.

By report dated April 7, 2003, Dr. Sohn noted examination findings of no upper extremity muscular wasting with normal strength at the shoulders, elbows, wrists and fingers. Thumb opposition and flexion were normal on the right and four on the left. Sensation to pin prick was intact throughout. There was no tenderness to palpation, but discomfort was noted on the left with manual muscle testing. No swelling, erythematic, skin rash or breakdown was present. Wrist range of motion measured with a goniometer demonstrated flexion of 65 degrees on the right and 70 on the left, extension of 72 degrees on the right and 65 on the left, radial deviation of 25 degrees on the right and 29 degrees on the left and ulnar deviation of 55 degrees on the right and 43 on the left. Dr. Sohn's impression was bilateral wrist pain, left much greater than right, with mild left carpal tunnel syndrome. He advised that under the fifth edition of the A.M.A., *Guides*, no impairment was identified on the right as appellant had normal strength, sensation and range of motion. Regarding the left, the physician advised that under Table 16-11, mild weakness in thumb opposition and flexion represented a 20 percent motor deficit involving

[1] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[2] Appellant also filed a recurrence claim on December 7, 2000 but did not stop work.

the median nerve below the mid-forearm. Under Table 16-15, the motor impairment value would equal 10 percent and multiplying the 2 values, a 2 percent impairment of the left upper extremity for thumb weakness was found. Regarding appellant's left upper extremity pain, Dr. Sohn advised that under Table 16-10, she had a 30 percent deficit involving the median nerve below the forearm. He then multiplied the 30 percent deficit times 39 percent, as identified in Table 16-15, for median nerve impairment below the midforearm, to equal a 12 percent pain impairment. Dr. Sohn then added the motor and pain impairments to equal a 14 percent left upper extremity impairment.

In a report dated April 11, 2003, an Office medical adviser agreed with Dr. Sohn's conclusion that appellant had a 14 percent impairment of the left upper extremity and a 0 percent impairment on the right. He advised that maximum medical improvement was reached on October 22, 2002.

In a decision dated April 17, 2003, appellant was granted a schedule award for a 14 percent impairment of the left upper extremity, for a total of 43.68 weeks of compensation, to run from October 22, 2002 to August 23, 2003.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[3] and section 10.404 of the implementing federal regulation,[4] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*[5] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6] Chapter 16 provides the framework for assessing upper extremity impairments.[7]

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

> "If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:
>
> > (1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides*, *supra* note 1.

[6] *See Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[7] A.M.A., *Guides*, *supra* note 1 at 433-521.

is rated according to the sensory and/or motor deficits as described earlier.

(2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed 5 percent of the upper extremity may be justified.

(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength, and nerve conduction studies: there is no objective basis for an impairment rating."[8]

ANALYSIS

Appellant received a schedule award for a 14 percent permanent impairment of the left upper extremity. The Board finds that the reports of Drs. Paul and Stromberg are insufficient to establish any degree of impairment. While both physicians made reference to the A.M.A., *Guides*, as they did not provide a basis for their impairment ratings or reference the specific tables of the A.M.A., *Guides*. Their reports are of dimnished probative value.[9] Furthermore, each of the physicians advised that appellant was only entitled to a 5 percent impairment on the left, which is less than the 14 percent awarded.

Dr. Sohn, an Office referral physician, provided a comprehensive report in which he described his findings on physical examination, applied the fifth edition of the A.M.A., *Guides* and advised that appellant had median nerve dysfunction. He concluded that she had a 14 percent permanent impairment of the left upper extremity. This report was reviewed by an Office medical adviser who agreed with Dr. Sohn's findings and determined that maximum medical improvement had been reached on October 22, 2002.

Section 16.5b of the A.M.A., *Guides* provides the method for evaluating upper extremity impairments. It provides that the severity of any sensory or pain deficit and motor deficit should be graded according to Tables 16-10a and 16-11a respectively. The values for maximum impairment are then to be discerned, utilizing the appropriate table for the nerve structure involved. The grade of severity for each deficit is then to be multiplied by the maximum upper extremity impairment value for the nerve involved to reach the proper upper extremity impairment for each function. Mixed motor and sensory or pain deficits for each nerve structure are then to be combined.[10]

Dr. Sohn provided range of motion findings for the wrist, which according to Figures 16-28 and 16-31 of the A.M.A., *Guides*, indicate that appellant's left wrist range of motion was

[8] *Id.* at 495.

[9] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[10] A.M.A., *Guides*, *supra* note 1 at 481.

normal.[11] Regarding her thumb, Dr. Sohn advised that according to Table 16-11[12] appellant had mild weakness in thumb opposition and flexion which he graded as a 20 percent motor deficit. He identified the median nerve as the structure involved and, utilizing Table 16-15,[13] found that the maximum impairment for median nerve involvement below the mid-forearm is 10 percent. Dr. Sohn multiplied the 20 percent by the 10 percent maximum impairment to find a 2 percent impairment for thumb weakness.

Dr. Sohn noted that appellant's sensation to pin prick was intact throughout. Thus she had no sensory deficit. He graded appellant's left upper extremity pain under Table 16-10 of the A.M.A., *Guides* as a 30 percent deficit.[14] Dr. Sohn then determined that under Table 16-15,[15] the maximum impairment for sensory deficit or pain in the median nerve below the forearm is 39 percent. He multiplied the 30 percent deficit grade by the 39 percent maximum impairment to find a 12 percent left upper extremity impairment for pain. Dr. Sohn added the 2 percent motor deficit with the 12 percent pain deficit to find a total of 14 percent left upper extremity impairment.[16]

The Board, therefore, finds that as Dr. Sohn provided a basis for his impairment rating and referenced the specific figures and tables in the A.M.A., *Guides* on which he relied, his report establishes that appellant has no more than 14 percent impairment of her left upper extremity.[17]

[11] Figure 16-28 indicates that normal wrist flexion and extension are 60 degrees each. Appellant's left wrist flexion and extension were measured by Dr. Sohn as 70 and 65 degrees respectively. Under Figure 16-31, normal radial deviation is 20 degrees; appellant measured 29 degrees on the left. Normal ulnar deviation is 30 degrees; appellant's measured 43 degrees. A.M.A., *Guides*, *supra* note 1 at 467, 469.

[12] A.M.A., *Guides*, *supra* note 1 at 484.

[13] *Id.* at 492.

[14] Table 16-10 provides that a Grade 3 impairment equals a deficit of 26 to 60 percent. It is described as "distorted superficial tactile sensibility (diminished light touch and two-point discrimination) with some abnormal sensations of slight pain that interferes with some activities." A.M.A., *Guides*, *supra* note 1 at 482.

[15] A.M.A., *Guides*, *supra* note 1 at 492.

[16] It is noted that section 16.5b of the A.M.A., *Guides* provides that motor and sensory or pain deficits for each nerve structure are to be combined. Dr. Sohn added the motor and pain impairments rather than combining them. His findings were agreed upon by an Office medical adviser. Under the Combined Values Chart of the A.M.A., *Guides*, a 2 percent impairment when combined with a 12 percent impairment would equal a 13 percent impairment, or 1 percent less than the 14 percent awarded. A.M.A., *Guides*, *supra* note 1 at 604.

[17] *See Mary L. Henninger*, *supra* note 9.

Regarding appellant's contention that she is entitled to a schedule award for her right upper extremity, the record before the Board does not indicate that the Office has adjudicated this issue. The Board's jurisdiction is limited to a review of final decisions issued by the Office.[18] The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.[19]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she has greater than a 14 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2003 be affirmed.

Issued: September 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[18] 20 C.F.R. § 501.2(c); *Shakeer Davis*, 52 ECAB 448 (2001). The Board also notes that the record does not indicate that the Office has rendered a final decision regarding appellant's claim that her hand arthritis was caused by her employment-related carpal tunnel syndrome.

[19] *Linda T. Brown*, 51 ECAB 115 (1999).